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# The Homestead Act

## Questions & Answers

Massachusetts General Laws, Ch. 188, §1-10

New act takes effect November 2, 2000

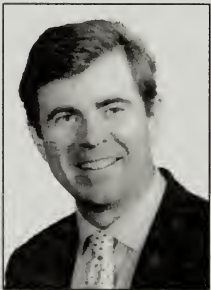
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**William Francis Galvin**  
Secretary of the Commonwealth



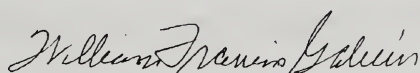
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Dear Homeowner...

**T**his pamphlet has been designed to answer some of the basic questions asked every day pertaining to the Homestead Act. It is not designed to provide any legal advice or address the practical effect of a claim of Homestead. As in all areas of the law, to fully understand what your rights are you should consult an attorney of your choice.

If you have any further questions or concerns about how the Registry of Deeds can assist you in filing a declaration of Homestead, please do not hesitate to give the Registry of Deeds office a call. We are here to serve you.

Sincerely,

A handwritten signature in cursive script that reads "William Francis Galvin".

William Francis Galvin  
Secretary of the Commonwealth

## What is a Declaration of Homestead/ Homestead Protection?

An Estate of Homestead is a type of protection for a home or real estate, in the form of a document called a "Declaration of Estate of Homestead". The form is filed at the Registry of Deeds in the county where the property is located, along with the title/deed to the property. It allows homeowners in Massachusetts to protect their property up to three hundred thousand dollars (\$300,000) of the value per residence, per family.

## Where do I file my Homestead?

All Homesteads must be filed in the county in which the residence is located. To acquire a claim of Homestead for a mobile home, you must file at the city or town clerk's office in the city or town in which the mobile home is located. Be sure the form is filled out completely and has been properly notarized, and remember to enclose a check for the proper recording fee with the Homestead form. The check should be made payable to the Commonwealth of Massachusetts.

Homestead forms may be obtained at most Registries of Deeds. They are also available at legal stationery stores or your local attorney's office.

## How am I protected?

The real property or manufactured home which serves as an individual's principal residence upon filing a declaration of Homestead, shall be protected against attachment, levy on execution or sale to satisfy debts to the extent of **three hundred thousand dollars (\$300,000)** per residence, per family.

The statute further states that "For the purposes of this Chapter, the word 'family' shall include either a parent and a child or children, a husband and wife and their children, if any, or a sole owner". Thus, a single person

who is the sole owner of a primary residence may file for a Homestead protection to the extent of **three hundred thousand dollars (\$300,000)**. Be sure to use the proper Homestead form when you are filing.

## *How am I protected if I am 62 or older, or disabled?*

The real property or manufactured homes of persons sixty-two (62) years of age or older, regardless of marital status, or of a disabled person or persons, regardless of age, shall be protected against attachment, seizure or execution of judgment to the extent of **three hundred thousand dollars (\$300,000)** each.

Real property or manufactured homes must serve as an individual's principal residence and **each individual** filing will be eligible for protection up to a **maximum amount of three hundred thousand dollars (\$300,000)** each regardless of whether such declaration is filed individually or jointly with another. **Elderly persons** filing jointly, regardless of marital status, will be exempt up to **three hundred thousand dollars (\$300,000)** each.

## *What does the Homestead Law mean by a "disabled person"?*

A disabled person is defined as an individual who has any medically determinable permanent physical or mental impairment which would meet the disability requirement of **supplemental social security**. You must attach to the Homestead form either the original or a certified copy of the award letter issued by the United States Social Security Administration, or a letter signed by a licensed physician registered with the Massachusetts Board of Registration in Medicine. Disabled persons must meet the disability re-



quirements stated in 42 USC 1382 (a) (3) (A) and (C). Basically, an individual is considered disabled – for the purpose of this law – if he or she **cannot** engage in any **gainful** activity as a result of the physical or mental impairment.

## *Are my spouse and children covered, should I pass away?*

**Yes.** Should the parent who declares the Homestead die, the law protects the residence until the youngest unmarried child reaches the age of eighteen (18) and until the surviving spouse dies or remarries.

## *If I am over 62 and my spouse is under 62, should we both file?*

**No.** The law states that only one spouse under 62 years of age can file a Homestead for their family. However, for elderly and disabled individuals, the protection up to \$300,000 is for each person's ownership interest. Therefore, it is recommended that the person over 62 years old file for an additional \$300,000. As other individual owners turn 62, they should also file an additional \$300,000 exemption. In some circumstances, unmarried joint owners may each file for the Homestead protection.

## *Will my Homestead Declaration protect my home from being taken if I go into a nursing home?*

Liens imposed by the Massachusetts Department of Public Welfare, as a result of the payment of Medicaid benefits, are exempt from the Homestead protection. However, as of the printing of this pamphlet, as long as the recipient, or the spouse of the recipient, is alive, the Commonwealth

will not look to the residence for reimbursement of Medicaid benefits. If the surviving spouse is also the recipient of Medicaid benefits, the Commonwealth will file a claim for reimbursement from the estate for the entire amount of Medicaid benefits paid, once the surviving recipient has died. The rules and regulations regarding Medicaid are complicated and constantly changing. You should seek competent counsel to address your specific concerns regarding Medicaid.

## *Is there anything I will not be protected from?*

The following are exempt from the Homestead Law:

- federal, state and local taxes, assessments, claims, and liens;
- first and second mortgages held by financial institutions or others;
- an execution issued from the Probate Court to enforce its judgment that a spouse pay for the support of a spouse or minor children;
- where buildings on land not owned by the owner of a Homestead estate are attached, levied upon or sold for the ground rent of the lot whereon they stand.
- upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

## *Can (a) trustee(s) file for home Homestead protection?*

Massachusetts Supreme Judicial Court has determined that registered land held in trust cannot be given Homestead protection. The case did not address recorded land. Until there is court clarification, we suggest you record a Homestead, even if your property is in trust and is not registered land.

What happens to my Homestead if I should re-mortgage or take out a second mortgage or home equity loan?

In some cases, the lending institution may require that your Homestead be released. In that case, once the mortgage is recorded or registered, you can record a new Homestead. The statute, in some cases, exempts first and second mortgages from Homestead rights, so the chances are you will not have to release a Homestead to refinance or obtain a home equity loan. Also, most standard mortgage forms used today have a specific release of Homestead rights for that particular transaction, which negates the necessity to file a general release of Homestead.

If I divide my time equally between my winter and summer residences, can I declare a Homestead on both?

**No.** A Homestead can be declared only on an applicant's "principal residence". A person can have more than one residence but the statute only allows the protection on one's legal domicile. There is no legislative intent to allow the exemption to apply to a vacation and not primary residence. For example, a husband cannot declare a Homestead exemption on one residence while the wife declares the exemption on the other residence, unless each can prove that the residence is their "principal residence".



## Does the Homestead protection take the place of home insurance?

**Absolutely not!** The Homestead protection is not a substitute for home insurance or any other type of liability insurance. These are separate and distinct types of protection. The Homestead protection will be effective after any liability insurance is used to pay for any judgments that are related to liability incurred under that particular insurance policy (e.g. home, automobile, etc.)

## How does the Homestead Declaration help protect a home against unsecured creditors in bankruptcy proceedings?

Remember that the Homestead Declaration protects a homeowner only from **unsecured** creditors. It will not offer protection from first or second mortgage lenders and/or equity lenders who possess a security interest in a home. If payments are not current on these forms of secured credit, a homeowner runs the risk of losing the home to foreclosure proceedings.

In a Chapter 7 bankruptcy, which is an asset liquidation proceeding, a homeowner is allowed to claim certain exemptions which function as asset protection allowances. If a Homestead Declaration is in place, and the state exemptions are claimed, a homeowner would be allowed to retain a much greater portion of the proceeds from a liquidations sale of the home than s/he would be allowed to keep under federal bankruptcy law exemptions. This factor in turn decreases (or eliminates) the possibility that the homeowner would be required to sell his/her home as part of Chapter 7 proceedings.

In all Chapter 13 bankruptcy proceedings, the court will require a homeowner to repay some or all of the unsecured debt over a three- to five-year period. You will be required to repay a percentage of that debt at least

equal to that which the unsecured creditors would receive were a homeowner required to proceed under Chapter 7 liquidation regulations. By increasing the amount of the home's exemption, the Homestead Declaration decreases the proceeds which would become available for repaying unsecured creditors through the Chapter 7 alternative. This may decrease the percentage of the unsecured debt the homeowner would be required to repay through a Chapter 13 proposal.

## *Where can additional information be obtained about bankruptcy issues as they apply to Homestead protection?*

This information can be discussed with qualified counselors from the Consumer Credit Counseling Service, a private non-profit agency with chapters nationwide. In MA, contact the Consumer Credit Counseling Service of Southern New England at: 1-800-208-2227.

## *Is the Homestead form difficult to understand and fill out?*

**No.** It simply asks for basic information. Just be careful when writing your **book and page** number or your **Certificate of Title** number. Both are shown on your **deed**.

## *Can my Homestead be terminated?*

The estate or claim of Homestead will be terminated upon the sale or transfer of the real property or mobile home during the declarant's lifetime, upon the death of the declarant and the remarriage of the declarant's surviving spouse and upon each child reaching the age of majority or by a release of the Homestead estate duly signed, sealed, and acknowledged by

the declarant, and recorded at the Registry of Deeds, or when the property ceases to be the principal residence.

## What is the filing fee?

The cost of filing the Declaration of Homestead is **ten dollars (\$10.00) for recorded land or mobile homes** and **thirty dollars (\$30.00) for registered land**. The form must be **signed** by the declarant filing and his/her signature must be notarized. Remember, all declarants over 62 must sign.

## How can I tell if my real property is recorded or registered land?

In the large majority of cases your real property is **recorded land**. Your evidence of title will be a **quitclaim deed**.

If your property is **registered land**, you may have received a large document called an **Owner's Duplicate Certificate of Title**. Owners' Duplicate Certificates of Title were eliminated as of April 9, 1997. After this date, you would have received a **certified copy of your Certificate of Title**. (If you are not sure whether your real property is recorded or registered, call your Registry of Deeds.)

• **Chapter 174 of the Acts of 2000** guarantees this act shall apply to declarations of homestead recorded or filed for registration pursuant to section 1 or 1A of chapter 188 of the General Laws before, on, or after the effective date of this act, but the increase in the amount of homestead protection for declarations recorded or filed for registration before the effective date of this act shall not have priority over, and shall be subordinate to, any lien, right or interest recorded or filed for registration before the effective date of this act.



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